

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

O I P E

In re Application:

Rodney L. Dockery et al.

Serial No.:

08/813,852

Filed:

March 7, 1997

Art Unit:

2167

Examiner:

F. Bartuska

For:

SYSTEM AND METHOD FOR PROMOTING STORES
AND PRODUCTS

Commissioner for Patents
Washington, D.C. 20231



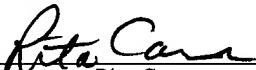
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I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Airbill No. EL315090650US, in an envelope addressed to: Box RCE, Commissioner for Patents, Washington, DC 20231.

Date deposited: March 28, 2002


Rita Carr

DECLARATION OF CALEB J. PIRTLE
PROVIDING EVIDENCE OF COMMERCIAL SUCCESS UNDER 37 C.F.R. §1.132

I, Caleb J. Pirtle, being of legal age and capacity, upon personal knowledge, declare as follows:

1. My name is Caleb J. Pirtle.

2. I am the vice president at Dockery House Publishing, Inc., ("Dockery House"), the successor-in-interest to Heritage Publishing, Inc., the assignee of United States Patent Application Serial No. 08/813,852 ("the '852 application"). I have held this position at Dockery House for the last 14 years and have held editorial positions in other companies for 10 years prior to that. As vice president at Dockery House, I have been involved in determining the market trends and demands for promotional programs offered to sales-related companies. I have also been closely involved in client contact, including analysis of client marketing goals and identification of promotional programs suitable for addressing those goals. In developing proposals for the promotional programs, I work closely with our customers to analyze their historic sales performance, their sales and marketing growth potential, and their advertising or

marketing budget needs. I also directly contact customers to obtain feedback and results on promotional product features which they have considered particularly valuable, and to find out any new feature requirements they might have. Based on my relationship with the clients and the information I obtain from them, I also assist in developing the appropriate promotional vehicle for their particular purposes.

3. I am familiar with the Dockery House invention as set forth in the claims of the '852 application. Specifically, I am familiar with the Dockery House technique of providing a magazine containing a plurality of general interest articles, wherein at least one of the articles makes reference to an identified product including specific brand information pertaining thereto, with coupons keyed to the articles containing brand specific products (referred to herein as "the Dockery House invention"). I have attached to my declaration Volume 1, Number 2, of "Sally," as an example of a magazine implementing the Dockery House invention for the Sally Beauty Company. Although the Dockery House invention may be implemented in various forms, I note that the coupon for the Jilbere Smooth, Straight & Shiny Iron presented upon page 24 and the corresponding article entitled "Turn up the Volume!" appearing upon pages 30-33 set forth an embodiment of the Dockery House invention.

4. The Dockery House invention represents a unique advance in product promotion as no method of promotional advertising existing at the time of filing the '852 application, March 7, 1997, included the elements which make the Dockery House invention superior as set forth in the claims of the '852 application. From my experience in the promotional and publishing industry over the past 24 years, I am aware of no other promotional magazine which includes a general interest article incorporating the product being promoted, and also includes a coupon keyed to the article containing brand specific products. By using these unparalleled techniques, the Dockery House invention is able to provide an article which does not appear to the consumer as an advertisement. The Dockery House invention maintains a credibility of the article in the eyes of the consumer; thus, implanting a favorable state-of-mind with the consumer in relation to the products being promoted.

5. Prior to October of 1997, Dockery House offered conventional promotional programs in which conventional promotional magazines which did not include the Dockery House invention would contain general interest articles, possibly recipes which may have included the brand-name of a product to be promoted, and cents-off coupons for some of the products to be promoted. However, as was the case with all previous promotional magazines of which I am aware, these conventional promotional magazines did not include coupons keyed to

articles containing brand specific products. Dockery House was unable to penetrate the approximately \$100 million promotional magazine market with sales of conventional promotional programs which included the use of conventional promotional magazines. I believe that Dockery House's inability to establish a share of the promotional magazine market was due to the fact that the promotional magazine market was mature and well established prior to October of 1997 and that there was no reason other than price for potential clients to switch to Dockery House for a conventional promotional program. However, Dockery House was unwilling to compete solely on price and, therefore, was initially ineffective at penetrating the market.

6. After a period of development, in October of 1997, Dockery House introduced the Dockery House invention to provide a unique and improved promotional program for promoting consumer items. Dockery House also continued to offer conventional promotional programs using conventional promotional magazines in October of 1997 and thereafter.

7. With the introduction of promotional programs using the Dockery House invention, Dockery House was able to penetrate the promotional magazine market. Specifically, promotional magazine programs in which the Dockery House invention was implemented were sold over promotional magazine programs offered by Dockery House implementing conventional promotional magazines. Accordingly, although Dockery House offered both conventional promotional magazines and promotional magazines implementing the Dockery House invention, Dockery House's sales of promotional magazine programs thereafter were exclusively those implementing the Dockery House invention.

8. After making available promotional magazine programs implementing the Dockery House invention, Dockery House was successful in obtaining approximately 5% of the nearly \$100 million promotional magazine market by October 2001. I believe Dockery House's ability to obtain this relatively large amount of a mature and well established market is attributable exclusively to the implementation of the Dockery House invention in the promotional magazine programs offered by Dockery House. I base my conclusion in part on the fact that Dockery House has been unable to obtain any of the promotional magazine market through sales of promotional magazine programs implementing conventional promotional magazines, whether prior to the introduction of promotional magazine programs implementing the Dockery House invention or thereafter with all other factors substantially the same between the promotional magazine programs implementing the Dockery House invention and promotional magazine programs implementing conventional promotional magazines. However,

although Dockery House continued to offer magazine programs implementing the thenfore widely known and generally accepted conventional promotional magazines with the same material terms, i.e., the same cost, units, distribution dates, etc., as the magazine programs implementing the Dockery House invention, the Dockery House clients select the promotional magazine programs implementing the Dockery House invention.

9. The success of the sales of promotional magazine programs implementing the Dockery House invention over conventional magazine programs offered by Dockery House is attributable to the unique use of feature articles that incorporate information collected about a particular brand of product, references that product brand, and includes corresponding coupons. I attribute the success to this feature in part because of feedback I have received from Dockery House clients indicating that the use of general interest articles providing product placement and corresponding coupons has resulted in increased coupon redemption rates and, therefore, represents a more desirable promotional magazine concept. I have attached a letter from Dockery House client Sally Beauty Company, Inc. hereto as Attachment A, as an example of such client feedback.

10. All statements made herein are of my own knowledge and are believed by me to be true and correct; and further these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application for patent commented on herein.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2002.


CALEB J. PIRTLE